IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No.1867 of 2006
Date of decision: December 10, 2007

Surinder Kaur and others.

…..APPELLANTS

Versus

Kamaljit Rai.

…..RESPONDENT

CORUM: **HON'BLE MR JUSTICE T.P.S.MANN**

PRESENT: Mr Premjit Kalia, Advocate
for the appellants.

T.P.S.MANN, J.

The suit for possession by way of specific performance of agreement to sell dated 30.11.1997, filed by Kamaljit Rai, respondent herein, was decreed by learned Civil Judge (Jr. Division), Amritsar on 1.9.2005. Aggrieved of the same, the appellants in the present appeal, who are legal representatives of the deceased-defendant (Kashmir Singh) filed an appeal, but the same was dismissed by learned Additional District Judge, Amritsar on 28.1.2006. Hence, the present second appeal by them under Section 100 of the Code of Civil Procedure.

The case of the plaintiff-respondent was that on 30.11.1997, Kashmir Singh agreed to sell his land measuring 8 kanals, comprising of Khasra No.4//2, situated in Village Mehnian Kaharan, Tehsil and District, Amritsar. The sale deed was to be executed on or before 31.5.2000. The total sale consideration was Rs.1,40,000/-. Out of the

same, Rs.35,000/- had already been received by the defendant and another sum of Rs.75,000/- was received by him, at the time of execution of the agreement to sell. The remaining consideration of Rs.30,000/- was to be paid at the time of execution of the sale deed. When the defendant did not execute the sale deed as per his commitment, the plaintiff filed the suit for possession by way of specific performance.

The legal representatives of the defendant filed their written statement, wherein they denied the execution of any such agreement to sell, as alleged by the plaintiff. It was pleaded that the same was false and fabricated document. They accordingly prayed for dismissal of the suit.

From the pleadings of the parties, learned trial Court framed six issues, but the contest mainly revolved around issues Nos.1 to 3.

Learned counsel for the appellants submitted that the due execution of the agreement to sell had not been proved by the plaintiff. The scribe of the said agreement was not brought into the witness box. Moreover, it cannot be believed that for the remaining consideration of Rs.30,000/-, the plaintiff was given time two and half years, as according to the agreement to sell, Rs.1,10,000/- had already been paid, out of the total sale consideration of Rs.1,40,000/-. Moreover, after the due date, as claimed in the agreement to sell, the suit was not filed immediately, but it was towards the expiry of the period of limitation when the same was filed.

The plaintiff had examined the two attesting witnesses of the agreement to sell Ex.P1, namely, Dharam Pal PW-1 and Jarnail Singh PW-2, who deposed that it was executed in their presence. The plaintiff also stepped into the witness box as PW-3 and reiterated his stand taken by him in the plaint. Mere fact that the one, who had scribed the agreement to sell Ex.P-1 had not been examined, is no ground to hold that the plaintiff had failed to prove its due execution.

The agreement to sell Ex.P1 was found to contain the signatures of Kashmir Singh-defendant. No attempt or effort was made by any of his legal representatives to summon any document, containing admitted signatures of the defendant, so as to get them compared with those appearing on the agreement to sell Ex.P1. In a way, the legal representatives of the defendant admitted the signatures of Kashmir Singh, appearing on the agreement to sell Ex.P1.

Although it is a fact that the total consideration was Rs.1,40,000/- and out of the same, Rs.1,10,000/- had already been paid and the remaining balance of Rs.30,000/- was to be paid at the time of execution of the sale deed, yet that is no ground to hold that the agreement to sell, as claimed by the plaintiff, had not been executed. It depends upon the relations between the parties as to how much time is to be given to the buyer under the agreement for paying the remaining amount of sale consideration. Moreover, as was clear from the averments in the plaint, the land in question was already given on lease by Kashmir Singh-defendant to one Yogeshwar Singh, owner of the

brick-kiln for digging the earth and said Yogeshwar Singh was to deliver back the possession on or before 31.5.2000. Therefore, the plaintiff and the defendant had agreed to execute the sale deed on or before the said date and at that time, the remaining amount of Rs.30,000/- was to be paid.

The agreement to sell was executed on 30.11.1997. The sale deed was to be executed on or before 31.5.2000. The suit was filed on 17.7.2000 i.e. within two months, as is clear from the certified copy of the decree passed by learned Additional District Judge. No question arises that the suit was filed towards the expiry of the period of limitation prescribed for filing the suit.

In view of the above, no case is made out for interference in the concurrent findings of facts arrived at by the learned lower Courts. No such substantial questions of law, as claimed by the appellants arise for determination in the present appeal. The same, being without any merit, is hereby dismissed.

December 10, 2007 **(T.P.S.MANN)**
Pds. **JUDGE**